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CONDOMINIUM: A SURVEY OF LEGAL PROBLEMS AND PROPOSED LEGISLATION

DAVID S. KENIN*

INTRODUCTION

The rapid, steady growth of American cities since the end of World War II has resulted all too often in a condition of “urban sprawl” and in the creation of severe land shortages in our metropolitan areas. The continued growth of these areas coupled with the “back to the city” movement of many disappointed suburbanites has aggravated this problem. As a result new forms of property ownership, used only sparingly in the past in this country, are making an appearance. These new forms are designed

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to take advantage of the economy of community living and to spread the cost of a single parcel of expensive urban land among many dwellings, while still retaining for the participants therein the advantages of home ownership.

The purpose of this article is to explore the newest of these forms—the condominium. Condominium is a system of cooperative apartment living, whereby an apartment dweller enjoys fee simple ownership of his apartment. It has appeared very recently on the American scene as a child of the times. Since the passage of the Housing Act of 1961,2 which provided for the extension of the Federal Housing Administration3 insurance to condominium projects, extensive interest has been generated in the subject and several excellent articles and pamphlets have been written thereon.4 For the most part these articles have approached the subject of condominiums first, from a historical point of view, tracing the development from its beginnings in the Roman era up through its extensive modern use in Europe and Latin America, and finally to its introduction into the United States by way of Puerto Rico.5 Having disposed of the historical development, the writers then proceed to discuss the suggested methods of creating a condominium along with the suggested documentation. Most of the writers have then touched upon a variety of legal problems created by a condominium project in the absence of a local enabling statute.6

As might be imagined, the advent of a unique form of property ownership creates a wide variety of legal and practical problems when confronted with our system of property laws which has its roots in rural England and even more rural America. Such basic problems as the legality of the ownership of air space and the method of devising an adequate legal description of individual parcels of air space will arise. In creating proper management and controls for the efficient and harmonious operation of a condominium, drafters are likely to run headlong into such old

3. Hereinafter referred to as FHA.
6. As of this writing only Arizona, Arkansas, Hawaii, Kentucky, South Carolina and Virginia have passed condominium legislation. Several other states are studying proposed legislation. See note 28 infra.
and battle-tested opponents as the Rule Against Perpetuities and the rule against undue restraints on alienation. Involved also are problems concerned with local real estate taxation, homestead, and federal income taxation.

Recently, the FHA has drawn a model statute which it hopes to see enacted, as modified by local conditions, throughout the United States. This model statute, if enacted, would go a long way toward solving many, but not all, of the foreseeable legal problems which may arise with the creation of condominiums. It is the purpose of this article to indicate the foreseeable legal problems which will be encountered by those dealing with condominiums, by means of an exploration of the model statute. By so exploring the model statute it should be possible not only to treat these problems, but also to indicate how the statute solves the particular problem, and to indicate wherein the statute fails to solve a problem or is silent thereon. Before approaching the proposed statute, the condominium concept will be more clearly defined and distinguished from other forms of cooperative ownership.

I. CONDOMINIUM DEFINED

In order to properly understand and work with the condominium concept it is necessary to define what is meant by the term "condominium" and to distinguish it from the more conventional type of cooperative apartment ownership. Until the recent birth of the condominium concept in the United States, cooperative ownership has been generally limited to a legal structure whereby the title to a building and to the land on which it is located is vested either in a corporation or a trust, and each tenant-owner holds a block of stock in the corporation or a certificate of beneficial interest in the trust together with a lease of a particular apartment in the building. Generally, the rights and obligations of the tenant-owners are spelled out in the lease, charter, bylaws, or trust agreement. This concept presupposes the use of one mortgage given by the corporation or trust as a means of financing. Individual apartments may not be separately mortgaged or conveyed.

7. See discussion at III. B. 9, 20 infra.
8. See discussion at III. B. 9 infra.
9. See discussion at III. B. 17 infra.
10. Ibid.
11. See discussion at IV infra.
13. Only one mortgage is used because title to the property vests in one entity. See Anderson, Cooperative Apartments in Florida: A Legal Analysis, 12 U. MIAMI L. REV. 13 (1957); Bernstein, Practical Problems in the Organization, Acquisition, Financing and Operation of Real Estate Cooperatives, N.Y.U. 18TH INST. ON FED. TAX. 89 (1960).
14. Since the apartment "owner" does not have title to his apartment he can not convey it as such. He may "sell" his unit by selling his stock (or assigning his beneficial interest) and assigning his lease to the purchaser.
Condominium has been defined as individual ownership in fee simple of a single unit in a multi-unit structure coupled with ownership of an undivided interest in the land and in all other parts of the structure held in common with all other owners of individual units. It contemplates the use of individual mortgages for each unit and the separate alienability of each unit.

Condominium is meant to incorporate all the advantages of home ownership with the economic advantages of cooperative apartment living.

II. Method of Establishing a Condominium

The generally accepted method of establishing a condominium contemplates the use of three basic documents: (1) The Declaration, (2) The Bylaws, and (3) The Individual Apartment Deed. These documents will be discussed in greater detail in connection with the proposed statute, but the reader should have some familiarity with them prior to undertaking an exploration of the proposed statute.

A. The Declaration

The Declaration is the basic instrument by which the property is committed to a condominium plan of ownership. It should be signed by the landowner, witnessed, acknowledged and recorded. The Declaration should contain a legal description of the entire property, a legal description of each apartment, a description of the land and facilities to be owned in common by all the apartment owners, and a description of the facilities of a common nature the use of which is limited to particular apartments. In addition the Declaration should provide for the establishment of an association of owners, a method of sharing the common expenses, and the percentage of vote assigned to each apartment in

15. Ramsey at 3.
16. Since each apartment owner has a separate fee simple title to his apartment, and an undivided interest in the land and other common areas, he may mortgage his apartment or convey it in much the same manner as the owner of a single family residence.
17. In addition to the tax advantages of home ownership (see discussion at IV infra) there is said to be a psychological advantage to the home owner in the form of a feeling of security. See generally Ramsey at 3.
18. The Declaration is somewhat analogous to a document containing separate “deed restrictions” as used in conventional subdivisions. Both instruments contain restrictions and covenants which are to run with the land. Both instruments are generally recorded prior to the first deed of an individual unit. The contents of both instruments are to be incorporated by reference into subsequent deeds. The Declaration, however, will be much more extensive than the conventional “deed restrictions.” See III. B. 8 infra. The Declaration is the name used by the FHA and by most writers. Other writers have used a different term to describe this instrument. Some statutes use the term “Master Deed” in lieu of Declaration.
20. Ibid.
21. Ibid.
the management of the building. Certain broad operating procedures and other details necessary to determine the rights and duties of the apartment owners should be included in the Declaration. These provisions will be discussed subsequently in detail.\(^\text{22}\)

**B. The Bylaws**

The Bylaws should document the operating rules of the building and the association of owners. It should provide for such matters as the selection of an administrative board, the method of calling meetings, the rules for giving notice thereof, and the method of regulating common areas and deciding upon maintenance and repairs.\(^\text{23}\) It is probably preferable, although not strictly necessary, that the Bylaws be recorded.\(^\text{24}\)

**C. The Deed**

The deeds to the individual apartments should, of course, comply with all local conveyancing statutes. Each deed should contain a direct reference to the Declaration (which has already been recorded), including the book, page, and date of recording. The deed should contain an accurate description of the property and of the apartment number as set out in the Declaration. The previous recording of the Declaration will simplify the drawing of the deed. Covenants, restrictions, regulations, etc., contained in the Declaration may be incorporated by reference into the Deed. It is probably best to make sure that the deed contains provisions which cause these covenants to run with the land, even though such a provision may have been included in the Declaration.

If properly drafted, the Declaration, the Bylaws, and the Deed, when read together, will contain an accurate description of the transaction, including a legal description of the property conveyed and the rights, duties and liabilities of all the parties as regards the operation and maintenance of the building. A more detailed description of the individual provisions of these documents will arise in connection with the discussion of the Model Statute to follow.

**III. THE MODEL STATUTE**\(^\text{25}\)

**A. Historical Background**

The earliest statute dealing with condominium in an American jurisdiction appears to have been enacted in Puerto Rico in 1951.\(^\text{26}\) This was followed by the statute now in effect in Puerto Rico enacted in 1958.\(^\text{27}\) Statutes have been enacted recently in at least six states\(^\text{28}\) and

\[\text{References:} \quad 22. \text{III. B. 8 infra.} \\
23. \text{See generally Ramsey at 28.} \\
24. \text{But see Appendix A, Model Statute § 18.} \\
25. \text{The FHA Proposed Model Statute is reproduced herein as Appendix A.} \\
27. \text{31 Laws of Puerto Rico Ann. § 1291 (1961).} \\
others are considering legislation at the present time. The FHA proposed statute appears to be modeled substantially after the Puerto Rican statute. The Model Statute discussed hereinafter will be the statute proposed by the FHA. Any reference to the “Act” or to the “Model Statute” hereinafter made will be to the FHA proposed Model Statute.

B. Section By Section Analysis

1. NAMING THE ACT

The Model Act is named the “Apartment Ownership Act.” It would perhaps be wiser to call it the “Condominium Act.” The term “apartment ownership” is too widely applied by the general public. It is often used in reference to stock cooperatives and its use in this act might lead to some confusion.

2. DEFINITIONS

Section 2 of the Act contains the basic definitions of terminology to be used throughout the Act. It is important that these definitions be understood, since the terminology is used repeatedly without further explanation.

Apartment is defined as follows: “‘Apartment’ means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, with a direct exit to a public street or highway or to a common area leading to such street or highway.” This definition is broad enough to apply to commercial and industrial buildings as well as to residential buildings. The further subdividing of apartments into smaller units is precluded by the requirement that each apartment is to have a direct exit to a public street or a common area leading to a public street.

The “apartment owner” is “the person or persons owning an apartment in fee simple absolute and an undivided interest in fee simple estate of the common areas and facilities in the percentage specified and established in the Declaration.”

The number, letter or combination thereof used to identify each


30. The six states which have already adopted condominium legislation use the term “Horizontal Property” in the title to the legislation. Perhaps the term “Vertical Property” would be more appropriate.
31. Appendix A, MODEL STATUTE § 2(a).
32. Condominium is generally associated with residential apartment buildings, but there is no reason why it can not be applied to commercial type buildings as well.
33. Appendix A, MODEL STATUTE § 2(b). The percentage of undivided interest in the common areas and facilities is to be determined by establishing the ratio which the value of each apartment bears to the value of the entire property.
apartment is defined as the “apartment number.” The apartment owners acting as a group in accordance with the Bylaws and the Declaration are to be known as the “Association of apartment owners.”

Section 2(e) defines “Building” as “containing five or more apartments, or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings, and comprising a part of the property.” The limitation to buildings with five or more apartments is designed to conform to FHA regulations. There is no reason why a local statute should conform to this requirement. The use of the condominium form in a two unit building is quite possible and may be economically desirable. It is suggested that the term “Building” be redefined to include structures containing two or more apartments. This change will permit greater flexibility in the use of the condominium as a tool for the economical development of urban areas.

Common areas and facilities are defined in section 2(f). Unless otherwise provided in the Declaration they are to include: (1) the land on which the building is located; (2) all structural members, bearing walls, lobbies, roofs, halls, corridors, stairways, etc.; (3) basements, yards, gardens, parking and storage space; (4) the premises for lodging janitors or other persons in charge of the property; (5) central utilities such as power, lights, gas, hot and cold water, heating, air conditioning; (6) elevators, pumps, fans and other apparatus for common use; (7) such other common facilities as provided in the Declaration; and (8) all other parts of the property normally in common use. This section of the statute is broad enough to cover most common areas and facilities imaginable. However, to avoid any doubts or misconceptions it is probably best that the common areas and facilities be set out in detail in the Declaration. It might be desired, in certain circumstances, to make some of these areas or facilities apartment areas rather than common areas and facilities. In this event it will be necessary to so provide in the Declaration so that these areas do not become common areas by operation of the Model Statute. In the absence of the statute it is necessary that common areas and facilities be set out in detail in the Declaration. Drafters will

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34. Appendix A, Model Statute § 2(c).
35. Appendix A, Model Statute § 2(d).
37. At least one such program is now under way in a Dade County, Florida subdivision.
38. This type of a program will enable builders to cut their land cost per unit in half, thereby allowing the construction of lower priced units. Additional savings to counties and municipalities may be effected by reducing both the original cost and the maintenance cost of water and sewer lines, streets, and other community facilities. For example, only one half of the lineal feet of water and sewer lines will be needed to service the same number of family units in a duplex condominium subdivision as would be needed in a conventional subdivision.
39. Of course FHA mortgage insurance will only be issued on condominiums containing five or more units. FHA Reg., 24 C.F.R. § 234.1(k) (1961).
find that section 2(f) makes a good check list for preparation of the common areas section of the Declaration.

Common expenses consist generally of the operating and maintenance expenses.\(^{40}\) These expenses should be set out in the Declaration and the Bylaws.\(^{41}\) Common profits, as might be expected, consist of the balance of all income from common areas and facilities after deducting common expenses.\(^{42}\) Common profits might arise in buildings containing stores or other commercial facilities which are held as part of the common areas and facilities and offered for rent. They might also arise where the association acquires apartments which it subsequently sells or leases.\(^{43}\)

Limited common areas and facilities are those areas designated in the Declaration as reserved for use of a certain apartment or apartments to the exclusion of other apartments.\(^{44}\) Such areas as balconies, storage space and parking facilities might well be set aside as limited common areas and facilities. These areas are owned in common, but their use is restricted to certain apartments. The Declaration should contain a description of these areas, together with a description of the apartment or apartments to which their use is limited.

“Majority of apartment owners” is defined as the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the Declaration to the apartment owners for voting purposes.\(^{45}\) The Declaration is to contain an assignment of a percentage vote for each apartment. Percentages are assigned on the basis that the value of each apartment bears to the value of the entire property. The same formula is used to determine the quantum of the undivided interest which each apartment owner gets in the common areas and facilities.\(^{46}\) It is quite possible, and generally probable, for the percentage assignments to work out unevenly, \(i.e.,\) for percentages to be carried to several decimal places. In this event neither side may reach fifty-one percent of the total vote—a vote of fifty and one-half percent to forty-nine and one-half percent is possible. Accordingly, it is suggested that “majority of apartment owners” be redefined to mean a group of owners with more than fifty percent of the votes. This redefinition should reduce the possibility of a stalemate.

\(^{40}\) Appendix A, \textit{Model Statute} § 2(f).
\(^{41}\) Insofar as is possible common expenses should be set out in the Declaration and Bylaws. This will prevent controversies from arising subsequently, concerning the classification of an expense as common, to be borne by every apartment owner, or private, to be borne by an individual apartment owner.
\(^{42}\) Appendix A, \textit{Model Statute} § 2(h).
\(^{43}\) Individual apartments might be acquired by the association of apartment owners through the exercise of a right of first refusal. See III. B. 9 \textit{infra}.
\(^{44}\) Appendix A, \textit{Model Statute} § 2(i).
\(^{45}\) Appendix A, \textit{Model Statute} § 2(j).
\(^{46}\) See note 33 \textit{supra}.
Within the meaning of the Model Statute, "person" is defined as an individual, corporation, partnership, association, trustee or other legal entity.47 "Property" is defined as the land, the building, all improvements and structures thereon, all owned in fee simple absolute and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of the Act.48

3. APPLICATION OF THE ACT

The Act is intended to apply only to property which has been submitted to the provisions of the Act by the sole owner or all the owners, by executing and recording a Declaration.49 Each apartment together with its undivided interest in the common areas and facilities is intended to constitute real property.50 The same conclusion may be reached without the passage of the Act. The Attorney General of Florida has determined that one owning a condominium apartment has an interest in real property.51 It is difficult to see how a fee simple interest in an apartment plus an undivided interest in the common areas and facilities can be anything other than real property. However, a legislative declaration that each apartment and its interest in the common areas shall, for all purposes, constitute real property may prevent litigation on that point and may serve to allay any fears which may be harbored by mortgage lenders.

Section 5 of the Model Statute provides that each owner shall be entitled to the exclusive possession of his apartment. Certainly, in the absence of such a provision in the statute each owner would be entitled to the exclusive possession of his own apartment. Such a right seems inherent in the nature of the owner's estate.52 However, the Declaration should make provision for a right of access by the building management to each apartment for the purpose of making necessary repairs to the common areas and facilities.

4. COMMON AREAS AND FACILITIES

Common areas and facilities are dealt with in section 6 of the Act. It provides that each owner is to be entitled to an undivided interest in the common areas and facilities in a percentage computed by taking the value of the apartments in relation to the value of the property. This is the method suggested by the FHA and is perhaps the most equitable

47. Appendix A, Model Statute § 2(l).
48. Appendix A, Model Statute § 2(m).
49. Appendix A, Model Statute § 3. All of the states which have enacted condominium legislation, to date, have some similar provision. Most of them refer to the Declaration as a Master Deed. The two terms are identical in meaning and purpose.
52. "An estate in fee simple is the entire interest and property in the land, the tenant holding the land to him and his heirs forever." 1 TIFFANY, REAL PROPERTY § 27 (1939).
method. However, in the absence of a statute the developer of a condominium may wish to apportion the interest in the common areas and facilities in another manner. There appears to be no valid reason why he may not do so.

The statute provides that the percentage of undivided interest in the common areas and facilities shall have a permanent character as expressed in the Declaration. These percentages shall not be changed without the consent of all of the apartment owners by way of an amendment to the Declaration. The percentage of undivided interest in the common areas and facilities is not to be separated from the apartment to which it appertains and is to be deemed conveyed or encumbered with the apartment even though the interest is not expressly mentioned or described in the conveyance or other instrument.

The common areas and facilities are to remain undivided and no apartment owner or any other person is to bring any action for partition or division of any part of these areas. Any covenant to the contrary is to be null and void.

Judicial partition is provided for in Florida, and in most states, by statute. It is authorized when the cotenants hold as tenants in common, coparcenary, or joint tenants. The apartment owners in a condominium are tenants in common in the common areas and facilities. Because of the nature of the property it is necessary that some provision be made to prevent a partition of these areas and facilities. Obviously, such a partition would disrupt the cooperative objectives of the condominium. It is said that restraints on partition are in effect restraints on alienation. As such these restraints might be attacked as violative of the policy which prevents undue restraints on alienation. However, restraints on partition are generally upheld if reasonable. In the absence of statute the courts might find a covenant in the Declaration or in the Deed, which prohibits partition, to be reasonable and valid under the condominium circumstances. However, the enactment of this section of the statute is necessary to avoid litigation and the possibility that the

53. An alternative method might be to reach a percentage by taking the number of square feet in each apartment in relation to the total number of square feet in all apartments.
54. Appendix A, Model Statute § 6(b).
55. Ibid.
56. Ibid.
57. Appendix A, Model Statute § 6(c).
58. Ibid.
59. Fla. Stat. §§ 66.01-10 (1961). "Partition refers to the process whereby two or more co-owners of property effect a dissolution of their common ownership and convert it into several ownerships of fractional portions of the original common property." Boyer, Florida Real Estate Transactions § 20.04 (1961).
61. 2 Powell, Real Property § 290, at 537 (1960).
courts might find a covenant against partition to be unreasonable. In the absence of the statute, drafters would do well to limit such covenants to a reasonable duration.

5. COMPLIANCE WITH COVENANTS, BYLAWS AND ADMINISTRATIVE PROVISIONS

The Act provides that each apartment owner is to comply with the rules and regulations and the covenants, restrictions and conditions set forth in the Bylaws, Declaration and the Deed to his apartment. Non-compliance will subject the violator to an action for money due, for damages, or for injunctive relief maintainable by the manager or the board of directors on behalf of the association. In a "proper case," "an aggrieved apartment owner" may bring the action. The Model Statute is silent on the meaning of the term "proper case." This writer suggests that a "proper case" be limited by the Act in such a fashion that an individual action may be maintained only when an apartment owner suffers some injury, by the action of a defendant apartment owner, which the other apartment owners have not suffered, or which is not common in extent or severity to that suffered by the other apartment owners. Such a provision would curtail a multiplicity of suits against an offending owner. A parallel for this provision might be found in an analogy to the law of nuisance. It is provided further in the proposed statute that no apartment owner shall do any work which will damage the safety or soundness of the property. Presumably the remedies discussed above are to be available for use against an apartment owner who violates this provision.

6. LIENS AGAINST APARTMENTS

The Model Statute provides that no lien shall arise or be effective against the property subsequent to the recording of the Declaration and while the property remains subject to the Act. During this period all liens and encumbrances are to be created only against the individual apartments and the common areas and facilities appurtenant to such apartments. Liens are to arise or be created in the same manner and under the same conditions as liens are presently created upon or against any other separate parcel of real property subject to individual owner-
ship. This means that a materialman furnishing materials to the building during the course of construction must file a mechanics’ lien, should filing become necessary, upon each individual apartment rather than upon the entire building, provided that the Declaration has been recorded prior to the recording of the lien. If labor is performed or materials are furnished for the common areas and facilities, a lien against each apartment may be filed, provided that the labor or materials were properly authorized. In the event of the filing of such liens each apartment owner may remove his apartment and the percentage of undivided interest in the common areas appurtenant thereto from the lien by paying to the lienor the fractional amount attributable to his apartment.

The amount attributable to each apartment is to be computed by reference to the percentages appearing in the Declaration.

7. THE PROBLEM OF PERSONAL LIABILITY

Closely related to the lien problem is the problem of personal liability of the apartment owners. Through the use of the Declaration and the Bylaws the apartment owners form an unincorporated association. This association affords little protection against a creditor who has contracted with the building manager to supply goods and services to the property. The members of this unincorporated association stand in the place of principals and the manager stands in the place of agent. Accordingly, when the manager contracts for goods and services on behalf of the association the apartment owners become jointly and severally liable. The creditor may then bring an action against any one of the owners for the amount due. Although the unfortunate apartment owner who has been successfully sued by such a creditor would probably have a right to contribution from his fellow apartment owners, he may be put to the trouble of defending a lawsuit and of trying to collect from the other owners.

In addition to the possible contract liability there is the distinct threat of tort liability for injuries to third parties due to unsafe conditions in the common areas or to the tortious acts of common servants. A solution to the problem is available, at least insofar as tort liability is concerned, through the use of insurance. Condominium Declarations and Bylaws should make this type of insurance mandatory. It has been suggested that an indemnity agreement be incorporated into the Declaration to aid the apartment owner who has been forced to pay for common goods or services in his efforts to obtain contribution from his co-owners.

69. Appendix A, Model Statute § 9(a).
70. Ibid.
71. Appendix A, Model Statute § 9(b).
73. See generally Prosser, Torts §§ 75-80 (2d ed. 1955).
8. THE PARTICULARS TO BE INCLUDED IN THE DECLARATION

Section 11 of the proposed act sets out certain particulars which the Declaration is to contain. These requirements are as follows:

1. Description of the land on which the building and improvements are located.
2. Description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed.
3. The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common areas to which it has access, and any other data necessary for its proper identification.
4. Description of the common areas and facilities.
5. Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved.
6. Value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owners for all purposes, including voting.\textsuperscript{75}
7. Statement of the purposes for which the building and each of the apartments\textsuperscript{76} are intended and restricted as to use.
8. The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city or county in which the building is located.\textsuperscript{77}
9. Provisions as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property.\textsuperscript{78}
10. Any further details in connection with the property which the person executing the Declaration may deem desirable to set forth consistent with the Act.
11. The method by which the Declaration may be amended, consistent with the provisions of the Act.

The particulars required by section 11 encompass only the bare, basic necessities which the Declaration should contain. Many more pro-

\textsuperscript{75} For the method of determining these percentages see note 33 \textit{supra}.
\textsuperscript{76} The term “apartment” may be applied to commercial areas, such as offices or stores, as well as to residential areas.
\textsuperscript{77} Apparently the framers of the Model Statute anticipate that the Declaration will have to be amended each time the association of apartment owners decides to change the person designated to receive service.
\textsuperscript{78} See discussion at III. B. 20 \textit{infra}.
visions should be included. Some of them have already been discussed in connection with prior sections of the statute and others will be discussed in connection with later sections. It should be understood that in addition to these basic requirements, the Declaration should contain a statement of all covenants, restrictions, and rules necessary to the successful operation of the condominium project. It would be difficult to draw a model Declaration which would be suitable to all condominiums. Each condominium project will have its own peculiar problems created by the desires and whims of those who sponsor its development. Accordingly, the Declaration must contain provisions adequate to establish and enforce the desires of the sponsors or owners.

9. THE RIGHT OF FIRST REFUSAL

One provision which will enforce the desires of sponsors or owners is the "Right of First Refusal" provision. This provision gives the association of owners a right of first refusal to purchase an apartment should an owner desire to sell. It provides that an owner who desires to sell his apartment should first obtain an offer from a prospective purchaser. The other apartment owners, through the association, are then to have a set number of days in which to meet the offer. If they decide to meet the offer, they will buy the apartment. Should they desire not to purchase, the owner is free to sell to the offeror. In this manner the apartment owners are able to exercise some measure of control in choosing compatible neighbors. This control is deemed necessary to make the cooperative scheme work with the least amount of friction. The right of first refusal provision should be supplemented with a provision giving the other apartment owners the right to redeem from a sale made in violation of the first refusal provision.

Two possible legal problems arise in connection with the right of first refusal: (1) courts may construe it as a restraint on alienation and (2) it may violate the Rule Against Perpetuities.

A strong argument can be made that the rule against restraints on alienation is not violated by a right of first refusal. It is argued that the provision does not militate against free alienation because the apartment owner is not deprived of his right to sell his apartment. He may still offer it for sale in the regular channels of commerce. The price he gets will be the market value. The purpose of the provision is not to restrain the owner from selling, but rather to enable the co-owners to purchase. Similar provisions contained in stock cooperative apartment agreements have been held not to be violative of the rule. In any event, it is sug-

79. For an explanation of the rule in Florida see Boyer, Florida Real Estate Transactions § 22.08 (1961).
80. See Ramsey at 20, 21; Simes and Smith, Future Interests § 1154 (2d ed. 1956).
gested that a provision authorizing the inclusion of a right of first refusal in the Declaration and declaring that such a provision is not to be considered as violative of the rule against restraints on alienation be included in the condominium act.

The Rule Against Perpetuities as applied to the right of first refusal creates another problem. The rule declares that interests which may not vest within lives in being and twenty-one years are void ab initio. The policy behind the rule is to prevent the tying up of property by restraints on alienation over long periods of time. A right of first refusal is, in reality, an option to purchase. As applied to condominiums the co-owners have an option to purchase the apartment of an owner who wishes to sell, at whatever price and terms may be offered by a prospective purchaser. This type of an option creates an interest which cannot vest until the option is or may be exercised. Since the option may not be exercised within lives in being and twenty-one years it is clearly violative of the rule. It is therefore urged that the condominium act include a provision specifically excepting the right of first refusal, as applied to condominiums, from the Rule Against Perpetuities. In the absence of such legislation, drafters should limit the right of first refusal to the period of the Rule Against Perpetuities.

10. THE INDIVIDUAL APARTMENT DEED

The Act provides that certain basic information is to be contained in the individual apartment Deeds. These Deeds are to contain a legal description of the land; the book, page, and date of recording of the Declaration; the legal description of the apartment as set out in the Declaration; a statement of the use for which the apartment is intended; a statement of restrictions on its use; and the percentage of undivided interest in the common areas and facilities appertaining to the apartment. In addition to these requirements any other details deemed desirable should be included in the deed. It will be noted that a large volume of detail is eliminated from the Deed due to the use and incorporation of the recorded Declaration. However, notwithstanding the Declaration, it has been suggested that all rights, benefits, privileges, options and covenants created by the Declaration be expressly conveyed and be further declared to be covenants running with the land. If it is desired that the title to the airspace is to survive the destruction of the building, a covenant to that effect should be included in the Deed.

82. See BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 22.07 (1961).
83. SIMES AND SMITH, FUTURE INTERESTS § 1154 (2d ed. 1956).
84. Appendix A, Model Statute § 12.
85. The Deed is the instrument which gives life to the covenants contained in the Declaration. Although the covenants contained in the Declaration will probably be construed as running with the land, their enforcement is so vital to the functioning of the condominium that their repetition in the Deed seems desirable. Certainly it can do no harm.
86. For a full treatment of the possibility of destruction of the building see discussion at III. B. 20 infra.
11. THE LEGAL DESCRIPTION PROBLEM

One of the more prominent legal problems facing the condominium drafters is the legal description problem. How do you describe a unit of air space? Although many methods for solving this problem have been suggested, they fall generally into three basic patterns: (1) the apartment survey method, (2) the subdivision plat method, and (3) the floor plan certification method.

a. The Apartment Survey Method

The apartment survey method, as its name implies, involves the use of extremely accurate, long and detailed surveys of each apartment in the building. First, a survey is made of the land, showing the location of the building and other improvements thereon. Next, separate surveys are made of each apartment, showing the elevation of the floor and ceiling surfaces above a datum plane, and the dimensions of the inside surfaces of the perimeter walls, and their location with reference to the boundaries of the land projected vertically upward. Then the Deed is prepared. The Deed first describes the entire property, including the land and all improvements, all of which is conveyed to all of the participants as tenants in common according to the fractional interest pertaining to each apartment as set out in the Declaration. Next, a provision is inserted in the Deed which excepts from the grant all of the apartments. Each one of these apartments excepted is then accurately described by metes and bounds and granted individually to the various participants as grantees. In this manner each participant is left with fee title to an apartment and an undivided interest in fee in the common areas and facilities.

Although this plan has actually been used successfully, several disadvantages appear to be obvious. Long, detailed, and cumbersome legal descriptions are necessary in each instrument. This will necessitate the use of special deeds, other than the customarily used printed forms, and will greatly increase the possibility of error and the occurrence of hiatuses (both vertical and horizontal), especially when the apartments are conveyed to remote grantees in later years. Many apartments will not be in exact cube form. Projections, such as balconies, sunken floors, exhaust fan ducts and the like are not at all uncommon. The drafter who attempts to use this method may find himself trying to describe an "octopus" by metes and bounds. It has been suggested that reciprocal easements for encroachments be created to solve this problem. It appears also, that this method is suited only to existing buildings, where adequate surveys can be made.

87. Reciprocal easements of this nature will permit one apartment to encroach upon the air space of another. See generally 3 Powell, Real Property ¶ 408, at 411; ¶ 411, at 435 (1950). In the absence of expressed reciprocal easements the court might find that such easements arise by implication in a condominium building. See 3 Powell, Real Property, ¶¶ 411, 435 (1950).
b. The Subdivision Plat Method

The subdivision plat method is a far simpler method than the apartment survey method. It involves the making of a plat similar to those used in conventional subdivisions. Of course a condominium plat would have to be in the form of a three-dimensional drawing in order to properly represent the air lots into which the space is being subdivided. However, such a scheme would permit an apartment to be conveyed by a number rather than by a cumbersome metes and bounds description as required by the apartment survey method.

The subdivision plat method is not entirely free from disadvantages. In the case of a new building it is contemplated that the plat will be recorded, or at least approved by the proper governmental authority, prior to the start of construction. It is not uncommon, especially in high rise construction, for a building as actually built to vary in dimension and location from the plans. Such a variation would, of course, create an inconsistency between the plat and the building as built. Perhaps a solution can be found by providing for tentative approval of the plat prior to construction and permanent approval and recordation after construction, so that the recorded plat may accurately reflect the building as built.

c. The Floor Plan Certification Method

The drafters of the Model Act have chosen the floor plan certification method for inclusion in the Act. This method is the one authorized by the Puerto Rican statute upon which the proposed act is modeled. The Act provides that a set of floor plans of the building (presumably containing a survey showing the location of the building on the property) showing the layout, location, apartment numbers and dimensions of the apartments be filed in the office of the recording officer when the Declaration is filed. The plans are to bear a verified statement by a licensed engineer or a registered architect certifying that the plan is an accurate copy of portions of the plans of the building as filed with and approved by the governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. The architect or engineer is to further certify that the plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built. If the plans do not contain such a certification when filed, the certification is to be later filed as an amendment to the Declaration stating that the plans already on file are accurate, etc. If there has been a change from the original plans to the building as built, a new set of plans together with the architect’s or engineer’s certification is to be filed. In any event, the certification is to be filed before the first conveyance of any individual

88. 31 LAWS OF PUERTO RICO ANN. § 1292(b) (1961).
89. Appendix A, MODEL STATUTE § 13.
apartment. The plans are to be recorded and cross-indexed with the Declaration. This method of legal description appears to have the basic advantage inherent in the subdivision plat method; i.e., it allows for a conveyance of an apartment by its number as contained in the recorded plans. It also eliminates the necessity of having a formal subdivision plat approved and recorded. Further, if authorized by statute, there appears to be no valid reason why this type of legal description should not be adequate for all purposes.

12. BUILDING SETTLEMENT

Closely related to the legal description problem is the problem of building settlement. Most buildings tend to settle or sink to some degree, particularly in the period immediately following construction. Although settlement is usually slight, often only a matter of an inch or two, it is easy to see that even that small a movement will cause apartments on upper floors to encroach upon the airspace of apartments on lower floors. For this reason it is suggested that reciprocal easements of encroachment be placed in both the Declaration and the apartment Deeds.90

13. DISPOSITION OF “BLANKET” OR CONSTRUCTION MORTGAGES

The Model Statute provides that at the time of the first conveyance of each apartment all mortgages and other liens affecting that apartment, including the undivided interest in the common areas and facilities pertaining to it, are to be satisfied of record, or released from any lien or mortgage by a partial release duly recorded.91 This section of the Act is designed to implement FHA requirements,92 and to ensure that there are no liens prior to the FHA insured mortgage. Whether or not such a statutory provision is necessary is doubtful. It is contemplated that a blanket construction mortgage, covering all apartments, will be used for the purpose of financing the initial construction of the building. Ordinarily, the attorney for the apartment purchaser and the lender's attorney will require that the apartment and its appurtenant interest in the common areas and facilities be released from the lien of the construction mortgage at the time that the purchaser takes title to his apartment. It is quite possible that under conventional financing plans, the construction mortgagee will also be the permanent mortgage lender. In this event it may not be necessary for the mortgage to be partially released as to each apartment at the time of the first sale of the apartment.93

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90. See note 87 infra.
92. FHA Reg., 24 C.F.R. § 234.26(c)(1), (2) (1961).
93. Instead of using one blanket construction mortgage for the entire building, as contemplated in FHA condominiums, a conventional mortgage institution might make use of fifty individual mortgages for a fifty-unit building. The bank could make construction advances as the building progresses on each mortgage. Each apartment purchaser would then assume his individual mortgage upon completion. This system would eliminate the need for partial releases and satisfactions of the “construction” mortgage and the drafting
14. RECORDING

The Model Statute provides that all instruments affecting the condominium property shall be entitled to be recorded.\(^94\) Further, neither the Declaration nor any amendments thereto are to be valid and effective unless they are duly recorded.\(^96\) In addition, the recording officer is to maintain a cross index between the Declaration and the conveyance of each apartment.\(^98\) In essence this means that a tract index is to be kept for condominiums.

15. REMOVAL OF THE PROPERTY FROM THE ACT

The Model Statute provides a method by which an existing condominium may be converted into a tenancy in common. It provides that the property shall be owned as a tenancy in common\(^97\) if all the owners record an instrument evidencing an intent to remove the property from the provisions of the Act, provided that all lien holders agree, by duly recorded instruments, that their liens should be transferred to the undivided interest of the apartment owner or apartment owners in the tenancy in common.\(^98\) This action will not bar the subsequent re-creation of a condominium with the same property.\(^99\) In the absence of a statute the drafter should include similar provision in the Declaration, designed to terminate the condominium relationship should the apartment owners so desire.

16. THE BYLAWS

Sections 18 and 19 of the Model Statute deal with the Bylaws. Section 18 provides that the Bylaws should be annexed to the Declaration and recorded therewith. It further declares that the Bylaws may not be modified or amended validly, unless the modification or amendment is set forth in a duly recorded amendment to the Declaration. This procedure appears sound. It ensures that a prospective apartment purchaser will have at least constructive notice of the basic “ground rules” that are to govern his relationship with his new “neighbors.” Apparently it is the intent of the framers of the statute that a prospective purchaser of a condominium unit be given the protection of the recording statute. If this is so, then one who purchases an apartment will not be bound by a provision of the Bylaws, if that provision was duly approved prior to his purchase, but remained unrecorded until after his purchase.\(^100\) This does

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\(^{94}\) Appendix A, Model Statute § 15(a).
\(^{95}\) Ibid.
\(^{96}\) Appendix A, Model Statute § 15(b).
\(^{97}\) Appendix A, Model Statute § 16(b).
\(^{98}\) Appendix A, Model Statute § 16(a).
\(^{99}\) Appendix A, Model Statute § 17.
\(^{100}\) Fla. Stat. § 695.01 (1961). The Florida statute is a typical notice type recording statute. The Model Statute provides that “no modification of or amendment to the Bylaws...
not appear to be a wise policy. It can create a situation in which all the
apartment owners, with the exception of the purchaser taking without
actual or constructive notice, are bound by a rule contained in an amend-
ment to the Bylaws. The purchaser without notice would be free to
violate the rule. Certainly unnecessary friction may result from such a
situation. Perhaps this section of the statute should contain a provision
which places upon the prospective purchaser the duty to ascertain from
the building management whether there are any unrecorded Bylaws in
existence. In the absence of such legislative provisions the courts might
apply the doctrine of inquiry notice to this type of situation. It is
suggested, however, that a statutory provision along the lines just sug-
gested will best accomplish the desired result with the least possibility
of friction and ill feeling among the co-owners.

17. SEPARATE TAXATION AND HOMESTEAD EXEMPTION

The Model Statute provides for the separate taxation of each apart-
ment and its percentage of undivided interest in the common areas and
facilities. Neither the building nor any of the common areas and
facilities is to be deemed a parcel for taxation purposes. This provision
of the proposed statute is in accord with the FHA requirements. Sep-
parate taxation appears to be necessary in order to protect each apartment
owner from his neighbor's failure to pay taxes. Should the entire building
be taxed as a single parcel, some apartment owners may be forced to
pay more than their share of taxes in order to protect their interests from
the delinquency of neighbors. Under a separate assessment system, the
failure of one apartment owner to pay real property taxes cannot en-
danger the interests of his neighbors.

Although there is at present no single statute in Florida which
specifically authorizes separate assessment, the Attorney General, by
opinion, has declared that "an apartment in 'condominium' together with
the undivided interests of its owner . . . are subject to taxation in the
name of the owner as an interest separate from the other owners." In

shall be valid unless set forth in an amendment to the Declaration and such amendment is duly recorded." This language in the Model Statute seems to indicate that the amendments to the Bylaws are not to be valid until recorded even though a party against whom they are sought to be enforced had actual notice of the amendment.

101. The doctrine of inquiry notice is frequently used when the purchaser of real property does not have actual or constructive notice of possession by a third party, but, by the exercise of due diligence he could have discovered that the third party was in actual possession. See Boyer, Florida Real Estate Transactions § 27.03 (1961). By analogy, where a condominium purchaser does not have actual or constructive notice of an amendment to the Bylaws, he should be placed on inquiry, because he can easily determine, through the use of due diligence, whether or not the Bylaws have been amended.

102. Appendix A, Model Statute § 22.
103. Ibid.
that opinion the Attorney General specifically held that "the separate property rights of apartment owners in a 'condominium,' including his apartment, may be assessed to and in the name of such owner." This opinion was based on inferences gleaned from several statutes, rather than on a mandate of a particular statute. Regardless of the status of existing law on the subject, any condominium legislation enacted in Florida should contain a separate taxation provision in order to eliminate doubt that may exist in the minds of chary mortgage lenders and title insurers.

No discussion of Florida real estate taxation of condominium would be complete without some mention of the homestead exemption problem. The Florida Constitution provides for exemption from taxation of the first five thousand dollars of the assessed valuation of the homestead. In order to qualify a property as a homestead one need have legal or equitable title to the real property and reside thereon and in good faith make the property his or her permanent home. Certainly, a condominium apartment can qualify for homestead exemption under these conditions. The only question to be answered is: may each apartment in a multi-apartment condominium qualify for a full five thousand dollar exemption? The Constitution is not at all clear on this point. The relevant section provides:

Said title may be held by the entireties, jointly, or in common with others, and said exemption may be apportioned among such of the owners as shall reside thereon, as their respective interests shall appear, but no such exemption of more than Five Thousand Dollars shall be allowed to any one person or any one dwelling house, nor shall the amount of the exemption allowed to any person exceed the proportionate assessed valuation based on the interest owned by such person.

The Supreme Court of Florida has interpreted this provision to allow only one five thousand dollar exemption to each building. This exemption is to be divided among those apartments qualifying as a homestead in accordance with their fractional interest in the entire building. Thus, in large apartment buildings homestead exemption would be of

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106. Id.
108. Ibid.
109. Ibid. (Emphasis added.)
110. Overstreet v. Tubin, 53 So.2d 913 (Fla. 1951). The Court said: "We think . . . that the only reasonable interpretation of the words 'dwelling house,' as used in Section 7 of Article 10, is that the whole structure of a multiple dwelling house, rather than each separate unit thereof, is meant; and it follows . . . that each owner of a separate unit is entitled to claim only his proportionate share of the $5,000 tax exemption, based on his proportionate part of the assessed valuation of the entire structure." Id. at 915.
negligible benefit to individual apartment owners. Whether or not homestead exemption should be extended to each apartment in the full five thousand dollar amount is purely a policy matter. Should the extension be deemed desirable an amendment to Article 10, Section 7 of the Constitution will be necessary, absent a more liberal construction of the existing provisions by the Supreme Court of Florida.

18. COLLECTION OF DELINQUENT ASSESSMENTS—PRIORITY OF LIEN

The Model Statute deals with the problem of unpaid common expenses by providing that all sums assessed by the association as common expenses chargeable to any apartment, but unpaid, shall constitute a lien on the apartment. This lien is to be prior to all other liens except tax liens and first mortgage liens, and may be foreclosed by the manager or board of directors in the same manner as a mortgage. That the association needs some effective means of collecting common expenses from delinquent owners is obvious. But, the wisdom of granting the association a lien prior to all other liens, except tax liens and first mortgage liens, appears doubtful. This provision places the association in the position of a permanent second mortgagee. The hardship that this can create is best illustrated by example. An apartment owner with a relatively small first mortgage may be compelled to sell his apartment and take a purchase money second mortgage as part of the purchase price. At the time of the sale and recording of the second mortgage there may have been no unpaid common expenses. Subsequently the purchaser may become delinquent in the payment of common expenses. At this point the erstwhile second mortgagee will have become a third mortgagee by operation of the statute, and the “second mortgagee” (now third) may be forced to redeem by paying the common expenses incurred by his purchaser. The only protection the “second mortgagee” would have would be by way of provision for acceleration of the note and mortgage for non-payment of common expenses. This would be but slight protection and would not alleviate the loss of priority. Needless to say, the procuring of secondary financing under this condition would be most difficult.

On the other hand, it can be argued that the apartment owners must have some effective means of collecting common expenses from recalcitrant neighbors. A suit against the delinquent owner to recover a

112. With the rising costs of local government the state legislature can be expected to hold the line on any further extension of homestead tax exemption benefits.

113. Since the full $5,000 exemption is to be denied apartment owners on the basis of a judicial construction of the Florida Constitution, it would seem that a constitutional amendment would be necessary to change the result. It is extremely doubtful that a statute will accomplish the purpose. It is submitted however, that the court could, on a re-examination of the problem, construe the term dwelling house to include condominium apartments.

114. Appendix A, Model Statute § 23(a).

115. Ibid.
money judgment is also provided for in the Act.116 This, however, does not afford sufficient protection to the other owners. It appears that the problem will reduce itself to a legislative determination of who needs more protection—the apartment owners or junior lien holders.

The Act further provides that when the first mortgagee obtains title to an apartment as a result of foreclosure of the first mortgage he shall not be liable for the share of the common expenses or assessments chargeable to that apartment which became due prior to the acquisition.117 The same privilege is accorded to any purchaser at the foreclosure sale.118 The unpaid expenses attributable to the foreclosed apartment are then deemed to be part of the general common expenses and are collectible from all the apartment owners, including the acquirer, in accordance with the percentages assigned in the Declaration.

This provision appears to grant to the first mortgagee an additional measure of protection. However, since his lien is deemed to be prior to the lien for common expenses,119 it is difficult to see why he could not wipe out the lien for common expenses in his foreclosure suit and escape liability for these expenses in the absence of such a statutory provision. At most, the provision appears only to avoid the necessity of naming the other apartment owners (or the association) as party defendants.

19. JOINT AND SEVERAL LIABILITY OF GRANTOR AND GRANTEE FOR UNPAID COMMON EXPENSES

The vendee who purchases a condominium apartment from its owner in a voluntary sales transaction does not fare quite as well as the vendee who purchases at a foreclosure sale. The former is to be jointly and severally liable with his grantor for all unpaid assessments accruing to the apartment up to the time of the conveyance.120 The Act does provide that the vendee shall be entitled to a statement from the manager setting forth the unpaid assessments.121 The apartment is not to be subject to a lien for any unpaid assessments in excess of those set out in the statement.122

This section indicates a caveat for abstract companies, title examiners, and in particular for attorneys who may represent the purchaser of a condominium apartment. In addition to checking for unpaid taxes and similar items these people will have to check for unpaid assess-

116. Ibid.
117. Appendix A, Model Statute § 23(b). It seems obvious that this provision is included to protect the FHA as insuror of the first mortgage.
118. Ibid.
119. Appendix A, Model Statute § 23(a).
120. Appendix A, Model Statute § 24.
121. Ibid.
122. Ibid. The effect of the statement from the apartment manager is similar to that of an estoppel certificate.
ments for common expenses. The attorney who represents the purchaser will want to obtain an estoppel certificate from the building manager as well as the usual estoppel letter obtained generally only from mortgagees.

20. DISPOSITION OF THE PROPERTY IN THE EVENT OF DAMAGE OR DESTRUCTION

The question of disposition of the property in the event of damage or destruction is intriguing. If the reader will picture for a moment the sight of a large apartment building destroyed beyond repair he will get some insight into the problem. But, if he will picture instead lines drawn in space representing the boundaries of the individual apartments, both horizontal and vertical, all sitting atop a vacant tract of land, he will begin to see the problem. As a result of severe damage a building may be destroyed as a livable structure, but the legal structure of title created by the condominium will survive. This means that the apartment owners will continue to be tenants in common in the land and in the air space that was formerly occupied by corridors, hallways, staircases, elevator shafts, walls and other common areas and facilities. However, each apartment owner will retain fee title to the cube of airspace formerly occupied by his apartment. This legal structure can produce a series of difficulties and controversies.

The first question that arises is—do we rebuild or don’t we? If it is decided by all of the owners to rebuild there are no remaining problems that are unsolvable. By cross conveyances all of the individually owned apartments can be made into tenancies in common, leaving the entire property, land and air space, as a tenancy in common in accordance with the percentages assigned in the Declaration. Rebuilding can then proceed, and, upon completion, new conveyances can be made creating the condominium structure. A similar procedure can be followed if all of the owners decide to sell the property.

The problems arise when some of the owners wish to rebuild and others wish to sell. Or, if they all wish to rebuild, and there is a difference in opinion as to what type of new building shall replace the old one. Conceivably, some obstinate owner may wish to retain title to his airspace without rebuilding (there’s always one in every crowd). Complicate these disputes with the desires of mortgagees and other lienors, who retain their liens on the individual plots of air space, should there be insufficient insurance funds with which to satisfy them, and you can come up with a legal and practical Frankenstein.

In an attempt to solve this problem the Model Act provides that a fixed number of days should be allowed for the owners to decide to

123. For a discussion of the insurance problem in condominiums see discussion at III. B. 21 infra.
rebuild. If no decision is reached within the time set, the property is deemed to be owned in common by all the apartment owners\textsuperscript{124} in accordance with the percentages of undivided interest in the common areas and facilities, as set out in the Declaration.\textsuperscript{125} Liens affecting the individual apartments are to be transferred to the percentage of undivided interest of the apartment owner in the tenancy in common, in accordance with the existing priority.\textsuperscript{126} The property is then to be subject to an action for partition by any apartment owner.\textsuperscript{127}

The suggested statutory solution appears to be both equitable and practical, particularly if it is coordinated with adequate insurance. However, this portion of the statute appears to be clearly violative of the Rule Against Perpetuities. It is to be remembered that any interest in land that may not vest within lives in being and twenty-one years is void. Certainly the building may not be destroyed within lives in being and twenty-one years. It therefore seems necessary that the proposed statute be amended to include a provision specifically excepting its effect from the Rule Against Perpetuities.

It has been suggested that the problem might be solved through the use of a determinable fee.\textsuperscript{128} According to this plan the fee would terminate and revert to the owners as tenants in common upon destruction of the building. However, a Florida statute\textsuperscript{129} provides that no reverter provision contained in a deed shall be valid and binding for more than twenty-one years from the date of the deed. This statute is even more restrictive than the Rule Against Perpetuities. Under the latter rule a skillful draftsman can extend the validity of a future interest for a period far in excess of twenty-one years. Perhaps the legislature should except condominiums from this statute insofar as it affects provisions for disposition of the property in the event of damage or destruction. In the absence of a statute excepting condominiums from the Rule Against Perpetuities and from the effects of section 689.18 of the Florida Statutes, the problem appears to be unsolvable.

\section{Insurancenumber=21}

The Model Statute is silent on the subject of insurance as it relates to condominium. This silence may indicate that the drafters of the Act believe that the decision of what type of insurance to buy and whether it is to be bought for the entire building in one policy or by the individual apartment owners, should be made by the condominium promoters or

\begin{footnotesize}
\begin{itemize}
  \item 124. Appendix A, \textit{Model Statute} § 26(a).
  \item 125. Appendix A, \textit{Model Statute} § 26(b).
  \item 126. Appendix A, \textit{Model Statute} § 26(c).
  \item 127. Appendix A, \textit{Model Statute} § 26(d).
  \item 129. \textit{Fla. Stat.} § 689.18(4) (1961).
\end{itemize}
\end{footnotesize}
the condominium management. It seems preferable that insurance expense be made a common expense and that a single policy be written for the entire building to insure against loss or damage by fire, windstorm and other hazards. This single policy method will provide a uniformity of coverage and will insure that the entire building is adequately insured. Individual owners would remain free to insure their own apartments separately for their own benefit. Attention should also be given to the problem of liability insurance, to protect the apartment owners from tort liability arising from injuries on the premises to third parties.

IV. CONDOMINIUM AND FEDERAL INCOME TAXATION

The taxpayer who owns his own home has several tax advantages over the taxpayer who rents a home or an apartment. It is generally agreed that a condominium owner will qualify as a home owner within the meaning of the Internal Revenue Code.

The Code provides that a home owner need not recognize gain on the sale of his home if he invests in a new home within a year of the sale of his old home, provided that the old and the new homes have been his principal place of residence. Certainly, a condominium owner meeting these requirements should be granted the same treatment. However, a word of caution is necessary. The requirement that the home be the principal residence may disqualify a taxpayer who maintains another residence. This qualification may have particular relevancy to the Florida area. A strong appeal is being made to northern residents to purchase an apartment in Florida to be used for the "winter season." The main thrust of this appeal is that the winter resident can "carry" his own apartment in Florida for less money than it would cost him for hotel accommodations for himself and his family during the winter season. A northern resident who purchases a condominium apartment under these conditions may find, upon selling the apartment, that he must recognize gain.

In addition to the advantages of non-recognition of gain on the sale of his apartment, the condominium owner should be entitled to a deduction for property taxes and for interest paid on mortgage indebtedness.

130. In a large building the policy will, of necessity, be amended often to show the interests of the various mortgagees. Each mortgagee will want a copy. Some mortgagees will require proof that the premiums on the policy are being kept current. Mortgagees may require that insurance premiums be paid to them by the individual apartment owner-mortgagor, so that they may pay the premiums directly to the insurance company.
131. See discussion at III. B. 7 supra.
132. The location of the condominium "home" in airspace should not cause the Internal Revenue Service to deny to its owner the tax advantages enjoyed by the taxpayer who owns a home on terra firma.
133. INT. REV. CODE of 1954, § 1034.
134. INT. REV. CODE of 1954, § 164.
135. INT. REV. CODE of 1954, § 163(a).
A word of caution is necessary for condominium promoters. Care should be taken in organizing the condominium management association so that it does not have the tax characteristics of a corporation. An organization having more corporate characteristics than non-corporate characteristics may be taxed as a corporation, regardless of its legal status under state law. This might create problems for those condominiums which have considerable commercial rental space, such as ground floor retail stores. The Treasury has established six characteristics which, taken together, may cause an unincorporated association to be taxed as a corporation. These characteristics are: (1) associates, (2) free transferability of interest, (3) continuity of life, (4) centralization of management, (5) limited liability, and (6) an objective to carry on business and divide the gains therefrom.

If it is anticipated that the association of apartment owners may show a profit from rental of common areas or from other sources, steps should be taken to see that the association does not fit the Treasury's corporate characteristics. Obviously, the association has associates. The presence of "profits" from rental space may indicate the presence of the "profit objective" characteristic. The easy alienability of apartments indicates the presence of the "transferability of interest" characteristic, and there appears to be a continuity of life inherent in the condominium structure. Thus, at least four of the six characteristics of a corporation may be present in a given condominium. Care should be exercised to minimize the effect of these characteristics.

The profit objective may be minimized, or eliminated entirely, by providing for low annual assessments for common expenses. This will allow the management to apply rental income to the payment of common expenses without showing a profit. Should a deficit arise, a special assessment can be used to overcome it. This procedure can eliminate any chance of profit.

The centralized management characteristic will probably not be found to exist if the management does not have the exclusive and independent authority to make management decisions. Accordingly, it is suggested that the Declaration contain a specific provision that the tenant owners have the right to direct the building management to carry out their will.

140. Treas. Reg. § 301.7701-2(b) (1960).
143. Treas. Reg. § 301.7701-2(c) (1960).
V. CONCLUSION

The condominium concept may be a useful tool in solving our growing urban housing problems. The concept of cooperative living, with its characteristic advantage of economy, coupled with the advantages of individual home ownership may be united in a single enterprise. Substantial savings can be effected in local governmental expenses through the extensive use of condominiums. The subdivision of one hundred lots for residences must occupy an area of thirty to forty acres, encompassing perhaps six city blocks. The same one hundred residences can easily be accommodated in an area of three or four acres, encompassing one half of a city block, through the use of condominiums. The economy in land use is apparent. But beyond mere land economy, there is available even greater forms of economy. Less lineal footage of roads, sewer and water lines and other utility lines are necessary to service a one-hundred-unit condominium than would be necessary to service a one-hundred-unit conventional subdivision. This means not only a lower initial cost, but a lower cost of maintenance and repair. This same type of economy may be effected in municipal transportation and communication. In short, the extensive use of condominiums may curtail the ever increasing tax burden brought about by urban sprawl while preserving for the participants many of the advantages of home ownership.

Undoubtedly the condominium form may be used in Florida today, without special legislation.\(^{144}\) The promoters must use great care in preparing the condominium documents, so that many of the legal and practical problems discussed herein can be avoided.

The condominium purchaser must use even greater care in examining the condominium documents, for he will be the party to bear the greatest loss in the event of error or lack of foresight in preparation of the instruments.

However, it seems imperative that Florida have condominium legislation to guide both promoters and buyers. There are many condominium problems which cannot be adequately solved without legislation. Further, there is great danger of a lack of uniformity in the method of creating the condominium form. Legislation already passed in other states\(^ {145}\) and under consideration in still more states, indicates that other legislatures recognize the urgency of the problem. The FHA Model Statute may serve as an excellent basis for Florida legislation. But, the legislature should go beyond the proposed Act and should endeavor to solve those problems which are not solved by the Model Statute. Proper legislation now will prevent many condominium problems from arising in the future.

\(^{145}\) See note 28 supra.
Condominium purchasers need that protection from poorly conceived condominium schemes that only well planned legislation can give them. The time for legislative action is now. Many condominiums are already under construction or in the planning stage in Florida. To hesitate is to invite confusion and unnecessary litigation. Condominium must not be allowed, by neglect, to become synonymous with pandemonium.

APPENDIX A

MODEL STATUTE FOR CREATION OF APARTMENT OWNERSHIP

Section 1: Apartment Ownership Act. This Act shall be known as the “Apartment Ownership Act.”

Section 2: Definitions. As used in this Act, unless the context otherwise requires:

(a) “Apartment” means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, and with a direct exit to a public street or highway or to a common area leading to such street or highway.

(b) “Apartment owner” means the person or persons owning an apartment in fee simple absolute and an undivided interest in fee simple estate of the common areas and facilities in the percentage specified and established in the Declaration.

(c) “Apartment number” means the number, letter, or combination thereof, designating the apartment in the Declaration.

(d) “Association of apartment owners” means all of the apartment owners acting as a group in accordance with the Bylaws and Declaration.

(e) “Building” means a building, containing five or more apartments, or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings, and comprising a part of the property.

(f) “Common areas and facilities,” unless otherwise provided in the Declaration or lawful amendments thereto, means and includes:

1. The land on which the building is located;
2. The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;
3. The basements, yards, gardens, parking areas and storage spaces;
4. The premises for the lodging of janitors or persons in charge of the property;
5. Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
6. The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
(7) Such community and commercial facilities as may be provided for in the Declaration; and
(8) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(g) "Common expenses" means and include:
   (1) All sums lawfully assessed against the apartment owners by the Association of Apartment Owners;
   (2) Expenses of administration, maintenance, repair or replacement of the common areas and facilities;
   (3) Expenses agreed upon as common expenses by the Association of Apartment Owners;
   (4) Expenses declared common expenses by provisions of this Act, or by the Declaration or the Bylaws.

(h) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(i) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such Declaration as from time to time may be lawfully amended.

(j) "Limited common areas and facilities" means and include those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(k) "Majority" or "Majority of apartment owners" means the apartment owners with 51% or more of the votes in accordance with the percentages assigned in the Declaration to the apartments for voting purposes.

(l) "Person" means individual, corporation, partnership, association, trustee or other legal entity.

(m) "Property" means and includes the land, the building, all improvements and structures thereon, all owned in fee simple absolute and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this Act.

Section 3: Application of Act. This Act shall be applicable only to property, the sole owner or all of the owners of which submit the same to the provisions hereof by duly executing and recording a Declaration as hereinafter provided.

Section 4: Status of the Apartments. Each apartment, together with its undivided interest in the common areas and facilities, shall for all purposes constitute real property.

Section 5: Ownership of Apartments. Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

Section 6: Common Areas and Facilities:

(a) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.
(b) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this Act as provided in Sections 16 and 26. Any covenant to the contrary shall be null and void.

(d) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(e) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the Bylaws.

(f) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Manager or Board of Directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

Section 7: Compliance with Covenants, Bylaws and Administrative Provisions.

Each apartment owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the Declaration or in the Deed to his apartment. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the Manager or Board of Directors on behalf of the Association of Apartment Owners or, in a proper case, by an aggrieved apartment owner.

Section 8: Certain Work Prohibited. No apartment owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament without in every such case the unanimous consent of all the other apartment owners being first obtained.

Section 9: Liens Against Apartments; Removal from Lien; Effect of Part Payment.

(a) Subsequent to recording the Declaration as provided in this Act, and while the property remains subject to this Act, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each apartment and the percentage of
undivided interest in the common areas and facilities, appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; Provided that no labor performed or materials furnished with the consent or at the request of an apartment owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to the Lien Law against the apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the Association of Apartment Owners, the Manager or Board of Directors in accordance with this Act, the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien pursuant to the Lien Law against each of the apartments and shall be subject to the provisions of subparagraph (b) hereunder.

(b) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentages appearing on the Declaration. Subsequent to any such payment, discharge or other satisfaction the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

Section 10: Common Profits and Expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

Section 11: Contents of Declaration. The Declaration shall contain the following particulars:

1. Description of the land on which the building and improvements are or are to be located.

2. Description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed.

3. The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification.

4. Description of the common areas and facilities.

5. Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved.
6. Value of the property and of each apartment, and the percentage of
undivided interest in the common areas and facilities appertaining to
each apartment and its owner for all purposes, including voting.

7. Statement of the purposes for which the building and each of the
apartments are intended and restricted as to use.

8. The name of a person to receive service of process in the cases here-
inafter provided, together with the residence or place of business of
such person which shall be within the city or county in which the
building is located.

9. Provision as to the percentage of votes by the apartment owners
which shall be determinative of whether to rebuild, repair, restore,
or sell the property in the event of damage or destruction of all or
part of the property.

10. Any further details in connection with the property which the person
executing the Declaration may deem desirable to set forth consistent
with this Act.

11. The method by which the Declaration may be amended, consistent
with the provisions of this Act.

Section 12: Contents of Deeds of Apartments. Deeds of apartments shall in-
clude the following particulars:

1. Description of the land as provided in Section 11 of this Act, or the
post office address of the property, including in either case the liber,
page and date of recording of the Declaration.

2. The apartment number of the apartment in the Declaration and any
other data necessary for its proper identification.

3. Statement of the use for which the apartment is intended and restric-
tions on its use.

4. The percentage of undivided interest appertaining to the apartment in
the common areas and facilities.

5. Any further details which the grantor and grantee may deem desirable
to set forth consistent with the Declaration and this Act.

Section 13: Copy of the Floor Plans to Be Filed. Simultaneously with the
recording of the Declaration there shall be filed in the office of the record-
ing officer a set of the floor plans of the building showing the layout, loca-
tion, apartment numbers and dimensions of the apartments, stating the
name of the building or that it has no name, and bearing the verified state-
ment of a registered architect or licensed professional engineer certifying
that it is an accurate copy of portions of the plans of the building as filed
with and approved by the municipal or other governmental subdivision
having jurisdiction over the issuance of permits for the construction of
buildings. If such plans do not include a verified statement by such architect
or engineer that such plans fully and accurately depict the layout, location,
apartment numbers and dimensions of the apartments as built, there shall
be recorded prior to the first conveyance of any apartment an amendment
to the Declaration to which shall be attached a verified statement of a
registered architect or licensed professional engineer certifying that the
plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built. Such plans shall be kept by the recording officer in a separate file for each building, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "apartment ownership," with the name of the building, if any, and each containing a reference to the liber, page and date of recording of the Declaration. Correspondingly, the record of the Declaration shall contain a reference to the file number of the floor plans of the building affected thereby.

Section 14: Blanket Mortgages and Other Blanket Liens Affecting an Apartment at Time of First Conveyance. At the time of the first conveyance of each apartment, every mortgage and other lien affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded.

Section 15: Recording.

(a) The Declaration, any amendment or amendments thereof, any instrument by which the provisions of this Act may be waived, and every instrument affecting the property or any apartment shall be entitled to be recorded. Neither the Declaration nor any amendment thereof shall be valid unless duly recorded.

(b) In addition to the records and indexes required to be maintained by the recording officer, the recording officer shall maintain an index or indexes whereby the record of each Declaration contains a reference to the record of each conveyance of an apartment affected by such Declaration, and the record of each conveyance of an apartment contains a reference to the Declaration of the building of which such apartment is a part.

Section 16: Removal From Provisions of This Act.

(a) All of the apartment owners may remove a property from the provisions of this Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

(b) Upon removal of the property from the provisions of this Act, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

Section 17: Removal No Bar to Subsequent Resubmission. The removal provided for in the preceding section shall in no way bar the subsequent resubmission of the property to the provisions of this Act.

Section 18: Bylaws. The administration of every property shall be governed by Bylaws, a true copy of which shall be annexed to the Declaration and made a part thereof. No modification of or amendment to the Bylaws shall
be valid unless set forth in an amendment to the Declaration and such amendment is duly recorded.

Section 19: Contents of Bylaws. The Bylaws may provide for the following:

(a) The election from among the apartment owners of a Board of Directors, the number of persons constituting the same, and that the terms of at least one-third of the Directors shall expire annually; the powers and duties of the Board; the compensation, if any, of the Directors; the method of removal from office of Directors; and whether or not the Board may engage the services of a manager or managing agent.

(b) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, shall constitute a quorum.

(c) Election of a President from among the Board of Directors who shall preside over the meetings of the Board of Directors and of the Association of Apartment Owners.

(d) Election of a Secretary who shall keep the minute book wherein resolutions shall be recorded.

(e) Election of a Treasurer who shall keep the financial records and books of account.

(f) Maintenance, repair and replacement of the common areas and facilities and payments therefor, including the method of approving payment vouchers.

(g) Manner of collecting from the apartment owners their share of the common expenses.

(h) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

(i) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.

(j) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities, not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners.

(k) The percentage of votes required to amend the Bylaws.

(l) Other provisions as may be deemed necessary for the administration of the property consistent with this Act.

Section 20: Books of Receipts and Expenditures; Availability for Examination. The manager or Board of Directors, as the case may be, shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the apartment owners at convenient hours of week days.

Section 21: Waiver of Use of Common Areas and Facilities; Abandonment of
**Apartment.** No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment.

**Section 22: Separate Taxation.** Each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel.

**Section 23: Priority of Lien.**

(a) All sums assessed by the Association of Apartment Owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (i) tax liens on the apartment in favor of any assessing unit and special district, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the Bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b) Where the mortgagee of a first mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of a first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association of Apartment Owners chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners including such acquirer, his successors and assigns.

**Section 24: Joint and Several Liability of Grantor and Grantee for Unpaid Common Expenses.** In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.
Section 25: Insurance. (To be determined locally)

Section 26: Disposition of Property; Destruction or Damage. If, within — days of the date of the damage or destruction to all or part of the property, it is not determined by the Association of Apartment Owners to repair, reconstruct or rebuild, then and in that event:

(a) The property shall be deemed to be owned in common by the apartment owners;

(b) The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(c) Any liens affecting any of the apartments shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(d) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the apartment owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each apartment owner.

Section 27: Actions. Without limiting the rights of any apartment owner, actions may be brought by the manager or Board of Directors, in either case in the discretion of the Board of Directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the Declaration to receive service of process.

Section 28: Personal Application.

(a) All apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the Declaration and Bylaws of the Association of Apartment Owners adopted pursuant to the provisions of this Act.

(b) All agreements, decisions and determinations lawfully made by the Association of Apartment Owners in accordance with the voting percentages established in the Act, Declaration or Bylaws, shall be deemed to be binding on all apartment owners.

Section 29: Severability. If any provision of this Act or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.